



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

PHILIP SCHWIMMER,
Complainant,

and

BED, BATH & BEYOND,
Respondent.

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**)Charge No: 2000 CA 0666
)EEOC No: 21 BA 00018
)ALS No: 11402**

RECOMMENDED ORDER AND DECISION

This matter is before me on the motion of the Illinois Department of Human Rights (Department) to dismiss the Complaint. Respondent appeared; neither Complainant nor the Department appeared. The Department filed the motion July 16, 2001, Complainant filed a response August 9, 2001 and the Department filed a reply August 17, 2001. The Respondent has not filed a response, although the July 26, 2001 order gave Respondent time in which to do so. This matter is ready for decision.

FINDINGS OF FACT

1. On October 4, 1999, Complainant filed a Charge of Discrimination with the Department.
2. The Complainant and the Department signed an authorization on August 23, 2000, and August 17, 2000, respectively, extending the 365-day time limit by 180 days for the Department to complete its investigation.
3. On October 16, 2000 – while the charge was still pending with the Department-- Complainant, through his attorney, filed the instant Complaint against Respondent with the Illinois Human Rights Commission (Commission) alleging to have been aggrieved by practices of age discrimination in violation of the Illinois Human Rights Act, (Act) 775 ILCS 5/1-101 et. seq.
4. Respondent filed an answer to the Commission Complaint on December 7, 2000.
5. On January 16, 2001, the Department dismissed Complainant's charge for Lack of Substantial Evidence.
6. Complainant filed a timely Request for Review with the Department's Chief Legal Counsel on February 20, 2001.
7. On July 9, 2001, the Department's Chief Legal Counsel sustained the Department's dismissal.
8. On July 16, 2001, the Department filed the instant motion to dismiss with the Commission.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this Complaint because it was not filed in accordance with sections 5/7A-102(G)(1) and 5/7A-102(G)(2) of the Act.

DISCUSSION

Complainant contends the July 16, 2001 motion to dismiss is untimely, but does not otherwise dispute the facts. Complainant argues that the Parties have been proceeding on this case at the Commission since October, 2000 and that the Department's delay in filing this motion is prejudicial to Complainant and would result in loss of time and expense.

The Department counters that issues related to jurisdiction may be raised at anytime; therefore, Complainant's argument as to timeliness is inapplicable. The Department further argues that it filed its motion to dismiss seven days after it became aware that the Complaint was pending before the Commission and that any delay was occasioned by Complainant's improper conduct at having filed the instant action at the Commission while the matter was still pending before the Department.

Complainant's argument is not supported by the statute or existing case law. As the Department points out, Complainant ran afoul of the statute by filing this Complaint with the Commission prior to the conclusion of the Department's investigation and prior to the agreed upon extended time for completing its investigation. The Department correctly argues that issues of jurisdiction may be raised at any time, and parties may not waive jurisdiction nor be estopped from objecting to jurisdiction because of their conduct, *Robinson v. Human Rights Comm'n*, 201 Ill.App.3d 722 (1st Dist.1990), citing *Fredman Brothers Furniture Co. v. Dept. of Revenue*, 122 Ill.2d 201 (4th Dist. 1985), and further citing *Caldwell v. Nolan*, 167 Ill.App.3d 1057, (1st Dist. 1988).

Section 5/7A-102(G)(1), in relevant part, states:

When a charge of a civil rights violation has been properly filed, the department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress...

Section 5/7A102 (G)(2), in relevant part, states:

Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued a report and determination pursuant to paragraphs (D)(1) and (D)(2) of this Section...The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.

Complainant filed the instant Complaint with the Commission on October 16, 2000, before the January 16, 2001 dismissal of the Charge was issued by the Department. Further, Complainant filed a Request for Review with the Chief Legal Counsel of the Department, which review was not completed until July 9, 2001. The record indicates that Complainant failed to notice the Department that the Complaint was filed on October 26, 2000, as required by Section 5/7A-102(G)(2); therefore, any prejudice caused by the delay in bringing this motion cannot be attributed to the Department.

The Complaint is not properly filed in accordance with statutory parameters; therefore, there is no basis for jurisdiction before the Commission.

RECOMMENDATION

I recommend that this Complaint be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: December 14, 2001